

Update on the Temporary Foreign Worker Program

By Henry J. Chang



The RBC Incident

- In early April 2013, the media reported that 45 RBC IT employees would be losing their jobs due to outsourcing and that the overseas company had brought its own employees into Canada under the TFWP, so that they could be trained at RBC's offices.
- By the end of the month, the Canadian Government had announced several proposed changes to the TFWP.
- Some TFWP changes have already been implemented. Others are still awaiting regulatory amendments.

Elimination of Wage Flexibility

- HRSDC (now ESDC) announced last year that it would permit employers to pay TFWs up to 15% less than the median wage for higher skilled occupations and 5% less for lower skilled occupations.
- After the RBC incident, this wage flexibility was eliminated.
- True reason for wage flexibility was that the figures established by Statistics Canada were not always appropriate.
- The elimination of this wage flexibility may result in TFWs being paid more than Canadians.

Suspension of A-LMO Initiative

- Last year, HDRDC announced an A-LMO initiative for employers who had obtained a positive LMO for one of its employees within the preceding 2 years.
- Under the A-LMO program, low risk employers could obtain an adjudication within 10 days.
- After the RBC incident, the A-LMO program was suspended.
- The elimination of the A-LMO program has caused significant backlogs in the regular LMO queue.
- Time frame varies by office but a wait of 8 weeks or more is likely.

New Questions Regarding Outsourcing

- After the RBC Incident, HRSDC began requiring employers to complete a *Canadian Labor Market Impact Questionnaire*, which asked whether the TFW would lead to job losses due to outsourcing or offshoring, or facilitate such events.
- As of July 31, 2013, the new LMO application form now contains these same questions.
- Answering “yes” to one or more of these questions will likely result in a denial.

New Advertising Requirements

- As of July 31, 2013, ESDC has increased the minimum recruitment requirements for LMO applications.
- Only limited exceptions to the requirements (live-in caregivers and certain agricultural positions).
- Now, all employers must advertise in the national Job Bank (or provincial equivalent) for at least 4 weeks before filing and it must remain posted until the LMO is issued.
- Employers must also utilize two or more additional methods of recruitment consistent with the normal practice for the occupation.

New Advertising Requirements

- For higher skilled occupations, one of the additional recruitment methods must be national in scope.
- Permitted recruitment methods are now specifically listed.
- Additional recruitment methods must be posted for a minimum of 4 weeks. Unknown if these methods must continue until the LMO is issued.
- For lesser skilled workers, employers must also target underrepresented groups such as Aboriginal youth, new immigrants and people with disabilities.

New Advertising Requirements

- Job postings must contain specific job details. Previously, these mandatory details applied only to lesser skilled occupations.
- Employers will be required to provide proof of advertisements and the results of their efforts to recruit Canadians.
- ESDC states that records of recruitment activities must be kept for a minimum of 6 years (in anticipation of the proposed regulatory changes).

New LMO Application Fee

- As of July 31, 2013, employers must pay an LMO processing fee of \$275CAD for each position requested.
- Previously, no fee was charged.
- The fee does not apply to certain agricultural occupations.
- No refund of the fee if a negative LMO is issued or if the application is withdrawn or cancelled.

New Language Restrictions

- On July 31, 2013, the regulations were amended to specifically restrict the use of language requirements, other than English or French, in LMO applications.
- Does not apply to certain agricultural workers.
- Foreign language requirements are not entirely prohibited but the employer must prove that another language is essential for the proposed job.
- Examples where foreign language skills could be justified include language translators or tour guides who cater to foreign tourists only in a non-official language.

Proposed Regulatory Amendments

- On June 8, 2013, CIC published proposed amendments to the IRPR, which will implement further changes.
- Proposed changes not yet in force.
- Proposed changes will include the following, among others:
 - When requested, employers must provide compliance records for the preceding 6 years (currently only 2 years).
 - Employer compliance verification can now be triggered by past violation, reasonable belief of violation, or random audit.

Proposed Regulatory Amendments

- Officers will have the ability to enter and inspect premises without employer consent and copy documents, without a warrant (unless the place of employment is a residence).